

## FISH AND WILDLIFE COORDINATION ACT

### OVERVIEW

The Fish and Wildlife Coordination Act (FWCA) provides that fish and wildlife resources are to receive equal consideration and be coordinated with other features of Federal projects and projects carried out under Federal permits and licenses that control or modify any bodies of water for any purpose. The FWCA requires federal agencies to consult with the U.S. Fish and Wildlife Service (USFWS) and the appropriate state fish and wildlife resource agency [in California, the [California Department of Fish and Game \(DFG\)](#)] before undertaking or approving projects. As applicable, the [National Marine Fisheries Service \(NMFS\)](#) also should be consulted. The aim of consultation is to conserve fish and wildlife resources by preventing their loss or damage, and by developing and improving their resources.

### WHO NEEDS TO COMPLY?

The FWCA applies to any proposal or authorization to impound, divert, deepen the channel, or otherwise control or modify streams or other bodies of water (excluding impoundments less than 10 acres in area) that are constructed, licensed or permitted by any federal department or agency.

### HOW LONG DOES THE APPROVAL PROCESS TAKE?

Compliance with the FWCA should occur parallel with and as an integral part of project planning, design, and construction. This should begin with reconnaissance and feasibility study phases, and continues through project approval and construction. Compliance with the FWCA may be carried out at the same time as, and be inter-related with, activities under NEPA and the Endangered Species Act.

### WHAT INFORMATION DOES THE APPLICANT NEED TO PROVIDE?

The action agency should provide the USFWS and DFG (and NMFS, as applicable) with early notification of potential projects, and should identify project goals and objectives for purposes of interagency consultation. The action agency should continue interagency consultation throughout the reconnaissance, feasibility, and design, and construction stages of projects, and provide appropriate project documents and other information regarding project features and structures, and affects on fish and wildlife resources at each stage. The USFWS and DFG may adopt data and studies, or portions thereof, from these planning processes and documents that are useful for FWCA investigations and reporting. The USFWS may also conduct studies and investigations for the purposes of evaluating the project.

## **WHAT IS THE FEE?**

There is no fee associated with compliance with the FWCA. However, the FWCA authorizes federal action agencies to fund the USFWS to conduct all or part of the investigations required for compliance. Provision of such funding is critical and often necessary to timely review and to the preparation of the report by the USFWS.

## **WHAT DOES THE APPLICATION AND EVALUATION PROCESS ENTAIL?**

Federal agencies must contact and consult with the USFWS and DFG on projects meeting the aforementioned criteria with a view to the conservation of fish and wildlife resources through "effectual and harmonious planning, development, maintenance, and coordination of wildlife conservation and rehabilitation." The NMFS should be included, as applicable. Interagency coordination should include early involvement in project planning so that fish and wildlife resources issues can be addressed before irretrievable commitments are made to a particular course of action. FWCA involvement includes assisting the action agency in developing alternatives and evaluating their impacts, reviewing proposals, discussing alternatives, assisting in design and construction, and developing mitigation measures.

The reports and recommendations of the Secretary of the Interior (represented by the USFWS) and DFG must be made an integral part of any report submitted by the federal action agency to Congress or other authority for project approval. FWCA reports and recommendations, based on surveys and investigations conducted by the USFWS, DFG, and NMFS; and/or data and studies adopted from appropriate planning processes, are prepared to determine project impacts on fish and wildlife resources, and to recommend means and measures to mitigate impacts and provide for preservation, development and enhancement of these resources.

## **DOES THIS PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?**

Compliance with the FWCA does not trigger other environmental compliance needs. However, interagency coordination under the FWCA typically addresses fish and wildlife issues associated with NEPA and the Endangered Species Act.

## **WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THIS PROCESS?**

The action agency should engage the USFWS, DFG, and NMFS as early in the planning process as possible to identify fish and wildlife concerns and ensure that projects are not delayed as a result of overlooked information and concerns.

The action agency should address USFWS, DFG, and NMFS concerns in project planning and reporting (e.g., Reconnaissance and Feasibility Study reports and NEPA documents), to ensure equal consideration of fish and wildlife, and to limit the need for additional FWCA investigations and reporting. FWCA report summarizing findings and recommendations may be considerably abbreviated when: (1) the USFWS is involved early and completely in the planning process to provide input along the way through Planning Aid reports; (2) NEPA documents and other planning vehicles contain adequate information and analyses of

fish and wildlife resources and associated project impacts; and (3) mitigation is discussed to the satisfaction of the USFWS, DFG, and NMFS.

Proposed actions should tier from FWCA compliance with the CALFED Bay-Delta Program Final Programmatic Environmental Impact Statement/Environmental Impact Report which reads:

Because of this extensive coordination, the incorporation of USFWS's recommendations, and the programmatic nature of the CALFED Program, USFWS and NMFS believe that the requirements of Section (b)(2) of the FWCA have been fulfilled. However, future CALFED Program actions that tier from the Programmatic EIS/EIR have not fulfilled the requirements of Section (b)(2) of the FWCA. Separate FWCA reports will need to be completed for those Phase III actions. USFWS and NMFS will complete FWCA reports for appropriate Phase III actions, presenting their agency's recommendations to avoid, minimize, and mitigate project impacts on fish and wildlife resources.



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